

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8050 of 1998

For Approval and Signature: Sd/-

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

DHIRUBHAI RAMSINHBHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

Mr. D.M. Thakkar for M/s. Thakkar Associates for petitioner.

Mr. N.D. GOHIL AGP for Respondent No. 1, 2 & 3.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/02/99

ORAL JUDGEMENT

1. The present petition is preferred against the order of detention passed by the Police Commissioner, Ahmedabad on 22nd July, 1998, against the present petitioner, under power conferred upon him, under Section 3 [1] of the Prevention of Anti-social Activities Act [PASAA for short] with effect from 22nd July, 1998 on the ground that the petitioner is a dangerous person as

defined in PASAA.

2. Mr. Thakkar, learned advocate appearing for the petitioner submitted that there is only one offence registered against the present petitioner, as can be seen from the reasons assigned for the detention produced at annexure 'B' [at page 13], for offence punishable under Section 120 [b] of IPC and Section 25 [1] [b] [a] of the Arms Act. No other offence is registered except this. The other incidents which are alleged to have occurred on 15th June, 1998, 26th June, 1998, 2nd July, 1998 & 15th July, 1998, are on the basis of belated statement recorded by the Investigating Agency and no offence therefor is registered. Mr. Thakkar has pressed in service a decision of Hon'ble Apex Court in the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and ors., as reported in 36 [2] GLR, 1268 and a decision of a Division Bench of this Court in the case of Hafijuddin Fazluddin Kazi Vs. Commissioner of Police, Ahmedabad City and Anr., as reported in 33 [2] GLR, 1332.

3. On the other hand, Mr. Gohil, Learned Additional Public Prosecutor appearing for the respondents submitted that although only one offence is registered against the petitioner, it relates to a serious offence. The petitioner in company of his accomplice is involved in trafficking of deadly weapons and fire arms and subsequently a number of incidents have occurred which has also disturbed the peace of the society. He has pressed in service a decision in the case of David and anr. Vs. Union of India, as reported in 1992 [4], Supreme Court Cases, 154 and Ramveer Jatav Vs. State of U.P. and anrs. as reported in 1986 [4] Supreme Court Cases, 762 and urged that even if no case is found, in solitary incidence, if there is subjective satisfaction of the authority concerned, an order of detention can be passed and it would not be vitiated.

4. There is no dispute that the petitioner is detained as he is found to be a dangerous person by the detaining authority. The definition of 'Dangerous Person' is given in Sec. 2 [c] of the Prevention of Anti-social Activities Act, 1985 [PASA] which runs as under ;

"Dangerous Person" means a person who either, by himself or as a member or a leader of a gang habitually commits, or attempts or attempts to commit or abets the commission of any of the offences, punishable under Chapter XVI or Chapter

XVII of the Indian Penal Code, [XLV of 1860], or any of the offences punishable under Chapter V of the Arms Act, 1959".

It would therefore, be necessary for the detaining authority to indicate that the person detained, is involved in habitual commission or attempts as to commission or abetment of commission of offences punishable under Chapter 16 or 17 of Indian Penal Code or any kind of offences punishable under Chapter 5 of the Arms Act, 1959. In this regard, in the decision rendered by the Division Bench of this Court in the Case of Hafijuddin Fazluddin Kazi Vs. Commissioner of Police, Ahmedabad City and Anr. [Supra], this question has been elaborately dealt with, in light of the various decisions rendered by the Apex Court that unless involvement of the detenu is shown to be of a repetitive nature in commission of offence under Chapter 16 & 17 of IPC and Chapter 5 of the Arms Act he can not be considered 'habitual offender' and consequently he can not be said to be a 'Dangerous Person'. In the instant case, an attempt is made by the respondents to indicate that the petitioner-detenu has repeatedly and persistently involved himself in offences, and therefore, detention is justified. In this regard, it may be noted that only one offence is registered and emerging of this fact in a subsequent statement not followed by any subsequent registration of offence makes it difficult to lead to an inference that the detenu is involved in habitual commission of offences, and is therefore, a dangerous person. It has been observed in the case of Hafijuddin Fazluddin Kazi [Supra] as under :-

"It is indeed true that certain statements were also recorded by the sponsoring authority but after having a careful look at the above said statements, the Bench decision proceeds to say, that it cannot be said that the petitioner would be a dangerous person as defined under the relevant provisions of PASA Act, 1985".

The Division Bench, while considering the case of Vijay Narian Singh Vs. State of Bihar [AIR 1984 SC 1334] further observed;

"While considering the above said provisions, Supreme Court has taken the majority view that the word 'habitually' means 'repeatedly' or 'persistently' and it implies a threat of continuity stringing together some repetitive acts".

5. Likewise, in the case of Rashidmiya Shaikh Vs. Police Commissioner, Ahmedabad and anr., reported in AIR 1989, SC, 1703, the Apex Court, while considering the provisions contained in Section 2[c] of the PASA Act, with which this court is concerned in the present petition, the Supreme Court has ruled that a solitary incident would not be sufficient to conclude that the detenu was habitually committing offences or attempting or abetting commission of offences.

6. Keeping in light these decisions, it is apparent that recording of statements at a later stage indicates that all the subsequent alleged offences indicate a simile to a proportion that raises doubt.

7. If the decisions relied upon by Mr. Gohil are taken into consideration, there the Hon'ble Supreme Court observed that even a solitary incident can form basis of detention if in the circumstances at enables the detaining authority to form requisite satisfaction about the future repetition of the prejudicial activity. However, the decisions were rendered in light of provisions of Sec. 3 Sub Sections 1 and 2 of the National Security Act, 1980 which runs as under:-

Section 3. Power to make orders detaining certain persons :- [1] The Central Government or the State Government may,-

[a] if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or

[b] if satisfied with respect to any foreigner than with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India.

it is necessary so to do, make an order directing that such person be detained.

[2] The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the

maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

8. It is, therefore, amply clear that the requirement of the detenu being a dangerous person as contemplated under PASA, is not the requirement under the National Securities Act. The criteria for considering the case of detention of both the laws are different, and therefore, that decision cannot advance the case of the respondents any further. Likewise, the decision in the case of Ramveer Jatav [Supra] was also rendered in respect of a case falling under Section 3 of the National Securities Act, 1980 and does not help respondents in any manner.

9. In the result, screening of the papers and the facts emerging from the affidavit of respondents indicate that the subjective satisfaction arrived at by the detaining authority to the effect that the detenu requires to be preventively detained under PASA stands vitiated and the petitioner-detenu cannot be preventively detained on the basis of the material on record.

10. In the result, the petition deserves to be allowed and the impugned order of detention requires to be quashed and set aside. Accordingly, the order of detention of the petitioner passed on 22nd July, 1998 stands quashed and set aside. The respondents are directed to release the petitioner-detenu from the detention forthwith, if he is not required in any other criminal case or proceeding.

Rule is made absolute accordingly.

Sd/-

Date : 11-2-1999. [A.L. DAVE, J.]

Rafik*